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International cooperation in combating transnational crime: elaboration of an international convention against transnational organized crime and other possible international instruments

Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime

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* E/CN.15/1999/1.

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I. Introduction

1. On the recommendation of the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council (Council resolution 1998/14 of 28 July 1998), the General Assembly adopted resolution 53/111 of 9 December 1998, in which it decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea. The Assembly also adopted resolution 53/114 of 9 December 1998, in which it called upon the Ad Hoc Committee to devote attention to the drafting of the main text of the convention, as well as the above-mentioned international instruments.

2. The Ad Hoc Committee held its first session from 19 to 29 January 1999 and its second session from 8 to 12 March 1999. It is scheduled to hold its third session from 28 April to 3 May 1999, in parallel with the eighth session of the Commission on Crime Prevention and Criminal Justice.

3. The present report is submitted to the Commission pursuant to General Assembly resolution 53/111, to apprise the Commission of progress achieved in the implementation of the mandate of the Ad Hoc Committee.

II. Background

4. In resolution 49/159 of 23 December 1994, the General Assembly approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex, sect. I) and urged States to implement them as a matter of urgency. In the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, the World Ministerial Conference on Organized Transnational Crime requested the Commission on Crime Prevention and Criminal Justice to initiate the process of requesting the views of Governments on the impact of a convention or conventions against organized transnational crime and on the issues that could be covered therein.

5. The Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, held in Buenos Aires from 27 to 30 November 1995, adopted the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime (E/CN.15/1996/2/Add.1). The States of the Latin American and Caribbean region expressed the interest of their Governments in the further study of the advantages of an international convention against organized transnational crime during the fifth session of the Commission, and proposed elements for inclusion in the convention.

6. In resolution 51/120 of 12 December 1996, the General Assembly took note of the proposed draft United Nations framework convention against organized crime, introduced by Poland at the fifty-first session of the General Assembly (A/C.3/51/7, annex). The Assembly requested the Commission to consider, as a matter of priority, the question of the elaboration of an international convention against organized transnational crime, taking into account the views of all States on this matter, with a view to finalizing its work on this question as soon as possible.

7. The African Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Dakar from 21 to 23 July 1997, adopted the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption (E/CN.15/1998/6/Add.1). The States of the African region expressed their strong support for the elaboration of an international convention against organized transnational crime, and made specific suggestions to that end. They called upon all States to contribute to and be actively engaged in the elaboration of such an instrument, making every possible effort to resolve differences and overcome conceptual or substantive difficulties, in order to permit the process to be completed in the shortest time possible.

8. In its resolution 52/85 of 12 December 1997, the General Assembly took note of the report of the informal meeting on the question of the elaboration of an international convention against organized transnational crime, held in Palermo, Italy, from 6 to 8 April 1997 (E/CN.15/1997/7/Add.2), organized and hosted by the Fondazione Giovanni e Francesca Falcone. The Assembly decided to establish an inter-sessional open-ended intergovernmental group of experts for the purpose of elaborating a preliminary draft of a possible comprehensive

international convention against organized transnational crime, which would submit a report thereon to the Commission at its seventh session.

9. The intergovernmental group of experts held its meeting in Warsaw, from 2 to 6 February 1998, and submitted a report to the Commission at its seventh session, containing an outline of options for the contents of the international convention against organized transnational crime (E/CN.15/1998/5).

10. The Asian Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Manila from 23 to 25 March 1998, adopted the Manila Declaration on the Prevention and Control of Transnational Crime (E/CN.15/1998/6/Add.2). The States of the region of Asia and Pacific welcomed the results achieved by the inter-sessional open-ended intergovernmental group of experts. They believed that the outline of options for the contents of the convention served as a solid basis for its further elaboration. They strongly supported such an endeavour, and confirmed their commitment to play an active role in the efforts to resolve differences and overcome conceptual or substantive difficulties so that the process could speedily move towards its conclusion. They urged the Commission to take advantage of the existing momentum and the consensus achieved on the desirability of such a convention, with a view to speeding up the process of its drafting and finalizing such a project as soon as possible.

11. At its seventh session, the Commission established an in-sessional working group on the implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, which discussed the draft convention against organized transnational crime. The working group agreed that the elaboration of the convention must proceed at a vigorous pace, with a view to completing the negotiation process, if possible, by the year 2000. The working group carried out a thorough discussion of the options compiled in the report of the meeting of the inter-sessional intergovernmental group of experts. In particular, it discussed the chapters on the scope of application of the convention; participation in an organized crime group; money-laundering; corporate criminal liability; sanctions; confiscation; transparency of transactions; jurisdiction; extradition; the obligation to extradite or prosecute (*aut dedere aut judicare*); extradition of nationals; and consideration of requests for extradition.

12. The informal group of the "Friends of the Chair", which was established pursuant to the recommendation of the Commission at its seventh session to assist the Chairman of the Ad Hoc Committee, held its first meeting in Rome from 17 to 18 July 1998. At that meeting, the informal group reviewed and endorsed the provisional agenda of the informal preparatory meeting of the Ad Hoc Committee, which the Government of Argentina had generously offered to host in Buenos Aires in order to enable the continuation without interruption of the work on the elaboration of the convention. The informal group also reviewed a provisional timetable for its work and the work of the Ad Hoc Committee, submitted by the Secretariat.

13. The informal preparatory meeting of the Ad Hoc Committee was held in Buenos Aires from 31 August to 4 September 1998. By completing the first reading of the outline of options for the contents of the convention and discussing several outstanding issues regarding articles 1 through 13, the meeting produced a new consolidated draft text of the convention, which would provide the basis for the work of the Ad Hoc Committee at its first meeting. The informal preparatory meeting was assisted by contributions submitted by Governments prior to and during the meeting.

14. The second meeting of the informal group of the "Friends of the Chair" was held in Buenos Aires during the above-mentioned informal preparatory meeting of the Ad Hoc Committee. The informal group approved the timetable of its meetings and those of the Ad Hoc Committee until the envisaged completion of the mandated functions of the Ad Hoc Committee in the year 2000.

15. The third meeting of the "Friends of the Chair" was held in Vienna from 5 to 6 November 1998. It reviewed and endorsed the provisional agenda and organization of work of the first session of the Ad Hoc Committee.

III. Progress in the implementation of the mandate of the Ad Hoc Committee

A. Organizational and procedural matters

16. In its resolution 53/111, the General Assembly decided to accept the recommendation of the Commission to elect Luigi Lauriola (Italy) as the Chairman of the

Ad Hoc Committee. Mr. Lauriola indicated that he would act in his personal capacity and not as the representative of his country or of any regional group. Following informal consultations, the Ad Hoc Committee elected the following additional officers:

Vice-Chairmen: Kiyotaka Akasaka (Japan)
Nabil Ammar (Tunisia)
Demetrio Boersner (Venezuela)*
Zuzana Chuda (Slovakia)
Eric Danon (France**)
Roberta Lajous (Mexico)***
Patricio Palacios (Ecuador)
Janusz Rydzkowski (Poland)
Shaukat Umer (Pakistan)

Rapporteur: Peter Gastrow (South Africa).

17. The Ad Hoc Committee was of the view that the election of an expanded bureau would reduce the need for sessions of the informal working group established to assist the Chairman of the Ad Hoc Committee (the informal group of the "Friends of the Chair"), which had functioned during the preparatory phase. It recommended that, subject to the availability of the necessary resources, the sessions of the informal group of the "Friends of the Chair" that had been foreseen should be converted into sessions of the Ad Hoc Committee, with interpretation in the six official languages of the United Nations.

18. As mentioned above, the Ad Hoc Committee has undertaken to complete the task entrusted to it by the year 2000. In view of the rather short time available, and considering the volume and complexity of the work that the Committee has to carry out, the Secretariat proposed a provisional timetable of sessions for 1999 and 2000. In so doing, the Secretariat attempted to reconcile the requirements of the Ad Hoc Committee with the need to provide necessary services to it within existing resources for the current biennium. With the appropriate planning, and with the support of the bureau of the Ad Hoc Committee, the Secretariat was able to absorb the bulk of the cost of providing the Ad Hoc Committee with the requisite conference and interpretation services. Additional requirements were met through the generous voluntary contributions made by the Governments of Japan and the United States of America to the Crime Prevention and Criminal Justice Fund, in support of the elaboration of the convention. The Ad Hoc Committee is thus scheduled to hold three more sessions in 1999 as follows:

Fourth session: 28 June to 9 July 1999
Fifth session: 4 to 15 October 1999
Sixth session: 6 to 17 December 1999

Three more sessions are tentatively planned for 2000, subject to consideration and approval by the Committee of Conferences of the General Assembly. In addition, and drawing on past experience acquired through the elaboration of other international legal instruments, a Conference of Plenipotentiaries is planned for the third or fourth quarter of 2000 to finalize the texts of the convention and the additional international legal instruments.

19. The first session of the Ad Hoc Committee was attended by representatives of 91 States. Its second session was attended by representatives of 95 States. Also attending the first and second sessions were observers for entities maintaining permanent observer missions to the United Nations, organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network, intergovernmental organizations and non-governmental organizations.

20. In its resolution 53/111, the General Assembly invited donor countries to cooperate with developing countries to ensure their full participation in the work of the Ad Hoc Committee. That issue was also raised by several delegations and by the Group of 77 and China at the first and second sessions of the Ad Hoc Committee. On two separate occasions, the Secretariat drew the attention of developed countries to the call made by the General Assembly. The Governments of Japan and the United States made voluntary contributions to the Crime Prevention and Criminal Justice Fund, indicating that a part thereof was to be used to facilitate the participation of least developed countries in the work of the Ad Hoc Committee. However, the funds made available to date are not sufficient to defray the costs of participation of all 48 least developed countries in the work of the Ad Hoc Committee, as reflected in the above-mentioned provisional timetable. Therefore, the Secretariat will request the regional groups concerned to determine the least developed countries that will receive some assistance in relation to their participation.

* For the work of the Ad Hoc Committee in 1999.

** Replaced by Bérengère Quincy.

*** For the work of the Ad Hoc Committee in 2000.

21. At the first session of the Ad Hoc Committee, several delegations expressed concern about the accuracy of the terms used in the translation of documents into some of the official languages, and recommended that the Secretariat undertake the compilation of a glossary of terms. At the second session, the Secretariat announced that the compilation of the glossary was under way, with the support of the Translation Service. The Secretariat intended to distribute a first draft of the glossary to the Ad Hoc Committee at its third session. States could then review it and provide input to the Secretariat with a view to finalizing the glossary by the fourth session. The glossary would ultimately be included in the official records of the elaboration of the convention.

B. Substantive matters

1. Elaboration of the draft Convention against Transnational Organized Crime

22. At its first session, the Ad Hoc Committee based its work on a document containing the draft Convention against Transnational Organized Crime (A/AC.254/4) and on proposals and contributions submitted by Governments (A/AC.254/5 and Add.2). The Chairman noted that that text had been the result of discussions and consultations held as follows: at the meeting of the inter-sessional open-ended intergovernmental group of experts on the elaboration of a preliminary draft of a possible comprehensive international convention against organized transnational crime, held in Warsaw from 2 to 6 February 1998; during the seventh session of the Commission on Crime Prevention and Criminal Justice, held in Vienna from 21 to 30 April 1998; and at the informal preparatory meeting of the Ad Hoc Committee, held in Buenos Aires from 31 August to 4 September 1998. The draft contained a number of options. On the recommendation of the Chairman, the Ad Hoc Committee decided to focus at its first session on eliminating options, in order to produce a consolidated text that would be the basis for the drafting and negotiations that would be undertaken at its subsequent sessions. Proceeding thus, the Ad Hoc Committee completed the first reading of articles 1 to 23 of the draft Convention. The suggestions for consolidating the text and proposals for new or amended provisions, together with specific observations on either the existing text or the substance of new provisions made by delegations at the first session, were included in a new version of the draft Convention (A/AC.254/4/Rev.1).

23. At its second session, the Ad Hoc Committee had decided to focus on articles 1 to 3 of the draft Convention, dealing with the statement of objectives, the scope of application and definitions. Basing its work on the revised version of the draft Convention (A/AC.254/4/Rev.1) and on proposals and contributions submitted by Governments (A/AC.254/5/Add.3 and 4), the Ad Hoc Committee concluded its discussion on article 1. The agreed text was included in the new version of the draft Convention (A/AC.254/4/Rev.2). In discussing article 2, the Ad Hoc Committee agreed that elements from paragraph 2 of the previous version could be useful to it in its consideration of other provisions, such as those pertaining to mutual legal assistance. The Chairman proposed that the list of offences included in article 2, paragraph 3, be removed from the draft text of the convention. Moreover, the Chairman proposed, as a compromise solution, that a list of offences, which could be either indicative or exhaustive, such as the list originally contained in article 2, paragraph 3, could be included either in an annex to the convention or in the *travaux préparatoires*. Those proposals were accepted by the Ad Hoc Committee. The list from article 2, paragraph 3, is contained in an attachment to the revised version of the draft Convention. That attachment also contains a list circulated by some delegations at the second session of the Ad Hoc Committee and a list submitted by the Government of Egypt subsequent to that session. The Chairman called upon all interested States to consult with each other in order to reach agreement on the contents of the list. At the second session, several delegations expressed their preference for including the list in an annex to the convention. Other delegations expressed their preference for no list at all.

24. At its second session, the Ad Hoc Committee discussed articles 2 *bis* and 3. It also completed a first reading of articles 24 to 30 of the draft Convention. The comments and proposals made by delegations are reflected in the revised version of the draft Convention.

25. The Ad Hoc Committee requested the Secretariat to carry out an analytical study on provisions of national laws relevant to the convention concerning offences punishable by deprivation of liberty, with an indication of the number of years of imprisonment. The study should be based on information to be solicited from Member States. Member

States would also be asked to indicate whether their legislation qualified offences as serious and, if so, what criteria were used, and which crimes were considered serious. Member States should submit the information before 30 April 1999 with a view to the study being completed and made available to the Ad Hoc Committee at its fourth session. Pursuant to that request, the Secretariat addressed a note verbale to Governments on 31 March 1999, seeking the necessary information for the conduct of the analytical study.

26. The Ad Hoc Committee has decided to focus at its third session on articles 4, 4 *bis*, 7 and 8 of the draft Convention, dealing with money-laundering, confiscation and transparency of financial transactions.

2. Elaboration of the additional international legal instruments

27. At its first session, the Ad Hoc Committee discussed the relationship between the additional international legal instruments, whose elaboration it had been requested to undertake pursuant to General Assembly resolutions 53/111 and 53/114, and the convention. Pursuant to these resolutions, the convention was to be a self-sufficient and self-standing instrument. The highest priority would be given to the signature, ratification and entry into force of the convention, and every effort should be made to negotiate a text that would be conducive to meeting that priority. The additional international legal instruments were viewed in principle as optional protocols to the convention, covering areas that required specificity, which the convention could not meet. There was a need to ensure that the optional protocols would be consistent with the convention, not only to ensure compatibility, but also to maximize the relevance and applicability of general provisions, such as those pertaining to international cooperation, which would be covered under the convention. However, it was pointed out that each instrument was intended to meet specific concerns. Consequently, the instruments might require a broad scope. In that case, and in line with the relevant resolutions of the Economic and Social Council and the General Assembly, the possibility that the additional international legal instruments might be independent from the convention could not be excluded. There was a discussion on whether signature of or accession to the protocols would be possible without prior signature of or accession to the convention, the general preference being towards requiring prior signature of or accession to the convention. The Ad Hoc Committee deemed that it was more appropriate to discuss that issue, together with the question of reservations, when considering the relevant articles of the draft Convention.

28. At its first session, the Ad Hoc Committee carried out a first reading of the additional international legal instruments on combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, on the basis of a draft submitted by the Government of Canada (A/AC.254/4/Add.2), and on illegal trafficking in and transporting of migrants, including by sea, on the basis of a draft submitted by the Governments of Austria and Italy (A/AC.254/4/Add.1). The proposals and comments made by delegations during this first reading were reflected in revised versions of the draft international legal instruments (A/AC.254/4/Add.2/Rev.1 and A/AC.254/4/Add.1/Rev.1). The delegations of Argentina and the United States introduced their respective versions of the draft additional international legal instrument against trafficking in women and children (A/AC.254/8 and A/AC.254/4/Add.3), and undertook to produce a combined draft for the second session of the Ad Hoc Committee.

29. At its second session, the Ad Hoc Committee decided to focus on a first consideration of the international legal instruments against trafficking in women and children. It based its discussion on a document containing the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.3/Rev.1). The Ad Hoc Committee carried out a first reading of articles 1 and 2 of the draft Protocol. The comments and proposals made during the second session are reflected in the revised text of the draft Protocol (to be issued as document A/AC.254/4/Add.3/Rev.2). During this first reading, there was discussion on whether the Protocol would address trafficking in women and children or trafficking in persons. The Secretariat was requested to clarify the question whether, by considering trafficking in persons, the Ad Hoc Committee would be departing from the mandate given to it by the General Assembly, and whether, if that were the case, it would be competent to do so. The Secretariat undertook to explore the matter and inform the Ad Hoc Committee of its findings.

30. The Ad Hoc Committee has decided to devote one day at its third session to the consideration of the

additional international legal instrument against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

IV. Action by the Commission

31. The Commission might wish to provide its views on the progress achieved by the Ad Hoc Committee thus far in the implementation of its mandate. The Commission might also wish to explore ways of supporting the work of the Ad Hoc Committee, in order to ensure that the latter performs its assigned tasks within the time-limits prescribed by Member States.